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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fourth session

SUMMARY RECORD OF THE 1327th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 16 March 1999, at 3 p.m.

Chairman: Mr. ABOUL-NASR

later: Mr. SHERIFIS

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Eleventh to fifteenth periodic reports of Mongolia (CERD/C/338/Add.3)

1. At the invitation of the Chairman, Mr. Bold, Mr. Tumur and Mr. Erdenebulgan (Mongolia) took places at the Committee table.

2. Mr. TUMUR (Mongolia) said that his Government hoped to learn valuable lessons from the Committee's examination of its report which he trusted would provide an impetus for furthering the implementation of the Convention in Mongolia.

3. During the 10 years since the submission of the previous report, Mongolia had witnessed radical changes in its political, social and economic system. The democratic reforms begun in 1990 had resulted in the dismantling of the old regime and Mongolia had become a country with parliamentary governance and a multiparty system; it was making a steady transition from a centrally planned to a market economy.

4. The new Constitution of Mongolia, adopted in 1992, included a special section proclaiming all human rights and fundamental freedoms. Over the period, a whole series of legal reforms relating to human rights had been introduced, with the adoption of 300 new laws, the amendment or revision of 200 other laws; a total of 50,000 legislative acts had been adopted.

5. In addition to establishing the legal framework for implementation of the Convention, Mongolia attached particular importance to human rights education, and had held a number of seminars on human rights with the cooperation of the Centre for Human Rights technical assistance programme, for lawyers, law enforcement officers, educators, governmental and non-governmental officials and other professionals. Raising public awareness of human rights and strengthening human rights education in Mongolia would remain major objectives for the Government.

6. Once the legislative foundations for the protection of human rights were laid, it was important to build mechanisms to ensure the implementation of the laws. Because Mongolia was under economic and financial strain, financial and technical assistance from international organizations and the donor community was needed to operate such structures.

7. In conclusion, he assured the Committee of his Government's strong commitment to compliance with its obligations under international human rights instruments and its will to do its utmost to ensure that all human rights were protected.

8. Ms. ZOU (Country Rapporteur) welcomed the resumption of dialogue with Mongolia after nearly a decade. The report had largely followed the Committee's guidelines, but was too simple in content and gave too little

information on specific legal provisions and actual implementation of the Convention. The Committee hoped that supplementary information would be provided by the delegation or in the next report.

9. Regarding the demographic composition of Mongolia, there were 15 ethnic groups, the largest being the Khalkhas, who accounted for 81 per cent of the total. Of the remaining 19 per cent, the largest minority group was made up of Kazaks, accounting for 6.1 per cent and constituting the most important non-Mongol ethnic minority. They had their own language, religious beliefs and customs and were concentrated in the western part of the country. During consideration of the previous report, Committee members had requested more information on the Kazaks, but the current report gave no information beyond their percentage of the total population. Were their religious beliefs respected and were there any mosques where they could worship? Could they use the Kazak language in the courts in the areas where they were concentrated? Were their ways and customs respected? What measures had the Mongolian Government taken to preserve their identity and customs?

10. According to her sources, the other ethnic minorities were basically Mongols, speaking different dialects. Again, the report contained scant information and the Committee would like to know about their general situation. What customs and practices or other special features differentiated them as ethnic groups?

11. The 10 years since the previous report had marked Mongolia's transition towards a market economy, with profound changes in the economic, political, cultural, ideological and other fields. What effects were those changes having on ethnic minorities? For example, what impact did the change in the system of ownership have on the economic life of ethnic minorities, and specifically those engaged in animal husbandry, agriculture or business? Were there any self-employed businessmen among the minorities and how many were there in percentage terms? How did the political changes affect the ethnic minorities' right to participate in the administration and discussion of State affairs; did they have more or less opportunity now than in the past? What impact did the changes have on the preservation of their special cultures?

12. The report stated that there were about 3,000 foreigners residing in Mongolia, roughly half from Russia and the other half from China. Many of the Chinese were said to be engaged in small business; was that the case? What were the major occupations of the Russians? Had any of the foreign citizens requested naturalization? Did the Mongolian Government treat all such requests equally?

13. Welcoming the legislative reform process under way, she said that the report did not specify whether there were any laws on ethnic minorities and against racial discrimination. As ethnic minorities accounted for around 19 per cent of the population, and Mongolia was a State party to the Convention, it was imperative that such laws be formulated. Did the Government have any plans to elaborate laws on ethnic minorities in accordance with the new Constitution and the provisions of the Convention?

14. Was the "article 7 of the Criminal Code" referred to in paragraph 8 the same as the "article 70" referred to in the previous report, or had Mongolia

adopted a new Criminal Code? The Committee regretted that the report still did not include the actual text of the article, and hoped it would be provided in the next report. It appeared that article 7 of the Criminal Code was in conformity with article 4 (a) of the Convention, but the requirements of article 4 (b) and (c) were apparently not met. The Mongolian Government might believe that no racist organization or activity existed in the country and that it was therefore unnecessary to formulate laws in that regard, but article 4 of the Convention was a mandatory article and the Committee's position thereon was contained in its General Recommendations VII (85) and XV (93). In a world where population movements occurred frequently, no country, particularly not one like Mongolia, with ethnic minorities and foreign residents, could guarantee that no such organization or activity would emerge on its territory. The Committee hoped that in amending its Criminal Code or incorporating new provisions, the Government would ensure it was fully in conformity with the provisions of article 4 pursuant to its obligations under the Convention.

15. With regard to article 5, it appeared from paragraph 11 that citizens had the right to invoke international treaties directly in any Mongolian court; was that the case? Did the courts provide translation for parties involved in court proceedings who did not speak Mongolian? Was there any legal aid system to assist those with economic difficulties?

16. The previous report had mentioned that 22 per cent of the 370 representatives who formed the Great Khural were from ethnic minorities, but the current report gave no such information. How many representatives were there currently from ethnic minorities; what was the percentage by minority? Was there an increase or a decrease compared to the period covered by the previous report? In local areas where the ethnic minorities lived, what was the percentage of ethnic minority representatives in local legislative bodies, for instance the percentage of Kazaks in local government in the west of the country? What percentage of official government posts were occupied by ethnic minorities overall? What were the percentages in areas where ethnic minorities were concentrated? She hoped the next report would give information on the share of ethnic minorities in the judicial branches of their local areas, such as how many judges, prosecutors and policemen were of minority origin.

17. The report stated that every Mongolian citizen had the right to free choice of employment. Over a decade previously, many overseas Chinese had been compelled to leave Mongolia and return to China to avoid being transferred, at the Government's behest, from the places where they lived and worked. She mentioned the case not because the people concerned had been Chinese but simply to inquire whether such cases still occurred. Did all people have the right to free choice of employment? What was the employment situation in Mongolia? What was the unemployment rate among ethnic minorities?

18. According to her information, the housing issue was handled fairly well, but she wished to know about the housing situation of the nomadic herdsmen. Did they have their own settlements? If they wanted to settle down did the Government provide them with assistance? Had the plan drawn up in 1987 to provide all children with middle-school education by the year 1995 been

carried to completion? She had heard that there were quite a number of school-age street children in the capital, Ulan Bator; what measures were the Government intending to take to provide education for those children? How was medical care provided in sparsely populated areas? Was the State still providing free medical care?

19. Were minority languages respected? Were there any newspapers, magazines or radio and television broadcasts in minority languages, such as the Kazak language?

20. There were two possible reasons for there having been no reports of cases involving discrimination (para. 18). Either there had indeed been no problems in that regard; or, because of insufficient information and education, people were unaware that racial discrimination constituted a crime, and minority populations were unaware that they could protect their rights by resorting to legal means and through the courts. The absence of reported cases did not necessarily mean the non-existence of racial discrimination. In any multi-ethnic society, the Government should never lower its guard. Even if there was no apparent discrimination, Governments should formulate laws against racial discrimination, provide education on the importance of eliminating racial discrimination and fighting racism, and adopt the corresponding measures.

21. With reference to article 19 of the Constitution, quoted in paragraph 17 of the report, she asked whether Mongolia had a State compensation law, and, if not, whether it had plans to formulate such a law. The Constitution could only lay down a general principle, whereas implementation required specific laws.

22. Regarding article 7, much had been done to provide human rights education in schools, but the Committee would like details of the Law on Education adopted in 1995 and hoped that the next report would include any articles of the law specifically against racial discrimination.

23. In its General Recommendation XIII (93) the Committee had requested States parties to include in their reports information on the training of law enforcement officials in human rights issues. Apart from the seminars mentioned in paragraph 29, was there any other systematic training of policemen, prosecutors, judges and lawyers? Did they all have access to a copy of the Convention against Racial Discrimination? Had the Convention indeed been translated into the Mongolian language? Were concerned parties able to read the concluding observations of the Committee?

24. Finally, she asked whether the Mongolian Government was prepared to ratify the amendment to article 8, paragraph 6, of the Convention and whether it was considering the possibility of making the declaration under article 14.

25. Mr. VALENCIA RODRÍGUEZ welcomed the demographic data provided, such information being crucial when assessing the implementation of the Convention in a multi-ethnic country such as Mongolia. With reference to the implementation of article 2, which was of fundamental importance, he was pleased to learn that the Mongolian Constitution prohibited ethnic discrimination, meaning that the various ethnic groups could practise their

languages and preserve their cultures and traditions. More details were needed, however, on the socio-economic conditions of those ethnic groups, which probably did not all enjoy the same level of development. Any measures adopted by the Mongolian Government to raise the standard of living of those groups would fall within the scope of article 2.2.

26. Stressing the importance of the 1993 Law on the Legal Status of Foreign Citizens, he pointed out that paragraph 7 of its article 10 stated that, in certain cases, restrictions could be imposed on the rights and freedoms of foreign citizens, with the exception of basic human rights. He inquired whether those basic human rights included the prohibition on racial discrimination, whether such restrictions had ever been imposed and on which rights in particular.

27. Regarding implementation of article 4, the information contained in paragraph 8 suggested that only the provisions of article 4 (a) and not 4 (b) were met. The Committee would appreciate further clarification on that point.

28. He requested more information on the exercise of the rights set out in article 5 of the Convention, in particular economic, social and cultural rights.

29. The information on the implementation of article 6 was very sketchy. The Committee would like to acquaint itself with the legislation which gave effect to the guarantees contained in article 19 of the Constitution and the provisions of article 6 of the Convention so as to be able to assess whether legal, administrative or other recourse was open to victims of acts of racial discrimination and whether adequate reparation or satisfaction could be obtained for damage suffered.

30. He welcomed the information provided on efforts made to promote tolerance and heighten awareness of basic human rights, as required by article 7 of the Convention. That was particularly important given the many ethnic groups in Mongolia. The adoption by the State Great Hural of Mongolia of the State Policy on Culture (para. 26) had been a positive step. As that decision was relatively recent, he hoped that the next country report would contain more data on how the policy had been implemented and what it had achieved.

31. The Committee recommended that the efforts by the mass media to disseminate information about the purposes and principles of human rights instruments be intensified, especially among ethnic groups, and that such information be translated into their languages. Dissemination should include Mongolia's periodic reports and the Committee's concluding observations.

32. Mr. NOBEL commended the Mongolian Government for its report, which had followed the Committee's guidelines. Mongolia was one of the few countries that did not appear in the most recent report of Amnesty International; the International Labour Organization (ILO) report on the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination also contained only positive remarks on that country.

33. Paragraph 2 said that a number of foreign citizens were "residing privately" in Mongolia. Were there other groups which were not residing privately there? He also drew attention to the surprisingly small number of residents from the large neighbouring countries, namely the Russian Federation and China. Was there any explanation for that? He raised the question because in the World Directory of Minorities of the Minority Rights Group International it was suggested that there might be some tension or animosity directed against Russians still in the country. Was there any substance to that assertion?

34. Mr. de GOUTTES said that, since nearly 10 years had passed since the consideration of the tenth report, Mongolia's fifteenth periodic report was rather brief and general in some areas; moreover, some of the information provided was more relevant to the work of the Human Rights Committee.

35. The otherwise interesting information on article 7 of the Criminal Code covered only one part of article 4 (a) of the Convention, whereas nothing was said about making racist violence and incitement to such acts, as well as activities promoting or financing racist activities or participation in organizations which promoted racial discrimination, a criminal offence. Paragraphs 6 and 18 asserted that there was no racial discrimination in Mongolia, which explained why the information was incomplete and no data had been provided on complaints, prosecution and judgments. But quite apart from the fact that the Committee did not usually accept the claim that there was no racial discrimination in a country, the Country Rapporteur had rightly asked whether the absence of complaints was not due to unawareness of their rights and the relevant legislation among the members of the many ethnic groups in Mongolia. He, too, stressed that comprehensive legislation against racism was necessary not only for punitive, but also for preventive and educational reasons.

36. He hoped that Mongolia would take steps to make the Convention known by publicizing its periodic reports and the Committee's concluding observations.

37. Mr. van BOVEN noted that Mongolia had been one of the first States parties to ratify the Convention. At the time, it had made a number of statements and reservations, which stemmed from that period. For example, upon ratification, the Mongolian People's Republic had stated that the provision in article 17 (1) of the Convention whereby a number of States were deprived of the opportunity to become parties to the Convention was of a discriminatory nature, and it had held that, in accordance with the principle of the sovereign equality of States, the Convention should be open to participation by all interested States without discrimination or restriction of any kind. As was well known, that statement had been inspired by the contested status of the German Democratic Republic, and he asked the Mongolian Government to consider withdrawing it. Mongolia had withdrawn a reservation that had been made in connection with article 22 of the Convention relating to the role of the International Court of Justice, and he hoped it would also consider withdrawing another statement which had likewise lost much of its meaning, namely the one made on 7 June 1984 relating to the question of the lawful representative Government of Cambodia.

38. He urged the Mongolian Government to consider ratifying the amendment to article 8 on financing the work of the Committee and to agree to make the declaration under article 14.

39. Mr. SHERIFIS, welcoming the resumption of the dialogue with the State party, hoped that Mongolia would report regularly in the future.

40. Concerning implementation of article 3, he was struck by the categorical statement in paragraph 6, one which the Committee had never accepted. To the credit of the State party, however, it was not asserted that there was therefore no need to legislate in accordance with article 4.

41. He welcomed the information on the wide range of activities undertaken in Mongolia to promote respect for human rights and inform the public about human rights instruments. Would the Committee's concluding observations be made known to the public at large? Was Mongolia considering the establishment of a national institution to facilitate the implementation of the Convention, as recommended by the Committee in its General Recommendation XVII?

42. The CHAIRMAN, speaking in his capacity as a member of the Committee and referring to a point made by Mr. van Boven about Mongolia's statement on article 17, said that, in his view, Mongolia had been right to make that statement and should be commended for it. Many countries had done so, because the wording in question was a restrictive formulation devised by some countries to prevent others from acceding to certain conventions.

43. Mr. Sherifis took the Chair.

44. Mr. TUMUR (Mongolia), responding to the Committee's questions and comments said that Mongolia was facing the economic difficulties common to former socialist countries and was doing its utmost to overcome them. His Government was very grateful for the Committee's support in the current situation.

45. Replying to questions about the Kazaks, he said that that minority group had its own province, secondary schools, television and radio stations and newspapers, and the Kazak people held their own elections. He himself was a member of the Bayad minority. Many members of Parliament were from minority groups.

46. Mongolia had experienced many changes in the 10 years since the submission of its previous report. Today, Kazaks and all other minorities had their own places of worship. For example, there were about 40 Christian churches.

47. Since the adoption of the new Constitution, no discrimination against minorities or disputes among minorities had been observed. Ownership rights for minorities were protected by law. Minorities had the right to work in all professions. Unemployment, which was increasing in Mongolia, affected all groups equally. The Constitution protected the rights of minorities with regard to language, culture and education.

48. Ms. Zou had referred to small businesses run by Chinese in Mongolia. It was worth noting that many foreigners had businesses in Mongolia; some of them were big companies.

49. He said the delegation would reply to the remaining questions at the next meeting.

50. The Mongolian delegation withdrew.

Draft concluding observations concerning the eleventh to thirteenth periodic reports of Austria (CERD/C/54/Misc.18/Rev.2, future CERD/C/../Add...)

51. Mr. NOBEL (Country Rapporteur) said he had incorporated a number of comments by members of the Committee in the revised version of the draft concluding observations. However, he had not deleted paragraphs 3 and 4, as suggested by Mr. Banton, because he felt it was appropriate to mention some positive aspects, particularly the establishment of a National Fund to compensate all victims of National Socialism.

Paragraphs 1 and 2

52. Paragraphs 1 and 2 were adopted.

Paragraph 3

53. Mr. SHAHI said that the term genocide was more than just a crime against humanity. The term also included crimes against peace, waging a war of aggression, war crimes, etc., and he suggested that that should be made clear.

54. Mr. DIACONU said there was a distinction between genocide, crimes against humanity and other violations of humanitarian law. He suggested deleting the words "against humanity" in the first sentence.

55. Mr. de GOUTTES said that genocide was the most serious of all crimes against humanity. He felt that the phrase "as a crime against humanity" was too weak and should be deleted.

56. Mr. van BOVEN, supported by Mr. NOBEL (Country Rapporteur) and Mr. de GOUTTES, proposed rewording the phrase to read: "the State party has condemned genocide as a crime under international law".

57. Paragraph 3, as amended, was adopted.

Paragraphs 4 to 7

58. Paragraphs 4 to 7 were adopted.

Paragraph 8

59. Mr. GARVALOV said that the first sentence belonged under the heading "Positive aspects".

60. Mr. van BOVEN proposed amalgamating the first two sentences by inserting "While the Committee" at the beginning of the first and amending the beginning of the second to read: "It is nevertheless concerned".

61. Paragraph 8, as amended, was adopted.

Paragraph 9

62. Mr. NOBEL (Country Rapporteur), responding to a question by Mr. VALENCIA RODRÍGUEZ, said that "work councils" in Austria were bodies in which management and staff discussed issues of joint concern. The fact that foreign employees were not eligible for participation in such bodies was an obstacle to their full integration.

63. Mr. DIACONU proposed that the last sentence should be detached as a separate paragraph.

64. Mr. de GOUTTES proposed adding the following phrase to the new paragraph: "and ethnic minorities, including the Roma".

65. Paragraph 9, as amended, was adopted.

Paragraph 10

66. Mr. van BOVEN wondered whether it was appropriate to comment on such details as the use of the word "sole" in the Federal Constitution Act.

67. Mr. NOBEL (Country Rapporteur) said that the inclusion of the word "sole" made it difficult for complainants against racism in legislative and administrative acts to litigate successfully. The provision read: "Legislation and administration must both refrain from making distinctions on the sole basis of race, skin, colour, descent, or national or ethnic origin."

68. Paragraph 10 was adopted.

Paragraph 11

69. Mr. GARVALOV proposed replacing "further information" in the second sentence by "more detailed information".

70. Paragraph 11, as amended, was adopted.

Paragraphs 12 to 17

71. Paragraphs 12 to 17 were adopted, subject to minor editorial changes in paragraphs 13, 15 and 16.

Paragraph 18

72. Mr. de GOUTTES regretted that the wording of paragraph 18 was so weak.

73. Mr. van BOVEN said he agreed entirely, but pointed out that it represented a compromise worked out by Mr. Aboul-Nasr and Mr. Banton, and in their absence he would be reluctant to propose any amendment.

74. The CHAIRMAN said that that wording had been used in relation to other States parties and that the question was one of principle and should not be debated now.

75. Paragraph 18 was adopted.

Paragraph 19

76. Paragraph 19 was adopted.

77. The draft concluding observations concerning the eleventh to thirteenth periodic reports of Austria as a whole, as amended, were adopted.

Draft concluding observations concerning the fifth to eighth periodic reports of Portugal (CERD/C/54/Misc.27/Rev.2, future CERD/C/.../Add...)

78. Mr. GARVALOV (Country Rapporteur) said that the draft concluding observations incorporated suggestions by various members.

Paragraph 1

79. Paragraph 1 was adopted.

Paragraph 2

80. Mr. SHAHI suggested that the expression "additional information" might be changed to "more detailed information".

81. After a discussion in which Mr. GARVALOV (Country Rapporteur), the CHAIRMAN, Mr. SHAHI and Mr. van BOVEN took part, over whether the two expressions differed in their connotations or were technically related to information under, for example, the prevention procedure, the CHAIRMAN suggested that the current wording should be retained, subject to a discussion of terminology and usage on another occasion.

82. Paragraph 2 was adopted.

Paragraphs 3 to 5

83. Paragraphs 3 to 5 were adopted.

Paragraph 6

84. Mr. van BOVEN, supported by Mr. YUTZIS, said that the word "Gypsy", which had been used in the country report without any apparent negative connotation, did have negative or offensive connotations in other countries. It was not necessary to adopt the State party's wording and he suggested using "Gypsy/Roma".

85. The CHAIRMAN, speaking as a member of the Committee, said that it was necessary to take the State party's sensitivities and preferences into account. Portugal had submitted its report in French, and had used the term "gitan", which appeared to have no negative connotations.

86. Mr. GARVALOV (Country Rapporteur), supported by Mr. de GOUTTES, suggested using "Roma/Gypsy" when speaking on behalf of the Committee, and "Gypsy" when quoting the State party.

87. Mr. NOBEL said that he suspected that in Portugal there might be no negative connotation. The Committee might not be aware of all the implications of the issue: some members of the community in question preferred "Gypsy", others preferred "Roma". He was concerned that the solution suggested - "Roma/Gypsy" - might lead people to believe the Committee was referring to a specific kind of Gypsy. He suggested using "Roma (Gypsies)".

88. Mr. SHAHI suggested replacing "interest" with "appreciation" in the first sentence.

89. Paragraph 6, as amended by Mr. Nobel and Mr. Shahi, was adopted.

Paragraph 7

90. Mr. YUTZIS suggested inserting the words "the situation of" after the word "regularize".

91. Paragraph 7, as amended, was adopted.

Paragraph 8

92. Paragraph 8 was adopted, subject to minor editorial changes.

The meeting rose at 6 p.m.